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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|-----------------------|------------------|
| 10/674,597 | 09/30/2003 | Frank Colletti | COLLETTI-I | 5540 |
| 38563 | 7590 | 08/22/2005 | EXAMINER | |
| DAVID J. DETOFFOL, ESQ., P.C. 305 BROADWAY, SUITE 1101 NEW YORK, NY 10007 | | | TOMPKINS, ALISSA JILL | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3765 | |
| DATE MAILED: 08/22/2005 | | | | |

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|------------------------|---------------------|
| Office Action Summary | Application No. | Applicant(s) |
| | 10/674,597 | COLLETTI ET AL. |
| | Examiner | Art Unit |
| | Alissa J. Tompkins | 3765 |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 30 September 2003.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-7 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-7 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 9/30/2003 is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>9/30/2003</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

The drawings are objected to because figures 1-3 and 5-7 are unclear. The photographs are dark and cause the scanned documents to be difficult to comprehend. A clearer photo or drawing depicting the invention is required in reply to this Office Action. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Edwards (U.S. 4,300,240) in view of Wilcox (U.S. 891,122). Edwards discloses a mask member made of an insulating and flexible fabric, which is sized and shaped to fit the gullet and nose of the wearer. The mask member has a bottom perimeter in the gullet area extending along the intersection formed between the neck and the underside of the jaw. The mask also has apertures for the nose and mouth and includes a securing strap, which forms a tapering height as the straps extend rearward and co-join in the back of the head at the base of the skull (Figure 1). The straps also have fastening means adapted to each distal end for removeably fastening the ends. Edwards lacks the specific structure of the mask, which snugly fits about the forehead, ears, and eyes of the wearer. He also lacks a top perimeter contoured along the juncture where the forehead meets the scalp and apertures for the eyes and ears, wherein the top perimeter has a crown portion. However, Wilcox discloses a mask, which fits snugly about the forehead, ears, and eyes, having a top perimeter and crown member, and also includes openings for the eyes and ears allowing the wearer to see and hear when the mask is in use (Figure 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Edwards by extending the mask

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upward to cover the forehead and the ears, giving the mask a top perimeter, crown member and inserting openings for the eyes and ears.

As for claims 5 and 7, Edwards and Wilcox do not state the method of fabricating the face protector, but it would have been obvious to one of ordinary skill in the art at the time the invention was made that the method of manufacture would produce the device claimed.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Johnston (U.S. D293,829) shows a facial mask that has two sets of securing straps that fasten at the back of the head. O'Brien (U.S. 4,095,290) shows a cold weather mask that has apertures for the eyes, nose, and mouth.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa J. Tompkins whose telephone number is 571-272- 3425. The examiner can normally be reached on M-F 830-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on 571-272-4983. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alissa Tompkins
Patent Examiner
Art Unit 3765
July 27, 2005

AJT



JOHN D. CALVERT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700